



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 18, 2004

Ms. Courtney Alvarez  
City Attorney  
City of Kingsville  
P. O. Box 1458  
Kingsville, Texas 78364

OR2004-4982

Dear Ms. Alvarez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#203693.

The City of Kingsville (the "city") received a request for "any and all information regarding the investigation into the May 14, 2003 transportation of illegal immigrants through [the city] that ultimately concluded with the deaths of 19 undocumented workers in Victoria. This is to include, but not limited to, a 9-1-1- call made from a tractor trailer truck . . ." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state that the city previously received requests for the 9-1-1 telephone call-related information responsive to the instant request and that you previously requested an opinion from this office with respect to such information. In response, this office issued Open Records Letter No. 2003-4156 (2003), in which we determined that, pursuant to section 552.108(a)(1), the city may withhold the recordings of the telephone calls made to the city's police department that are related to the identical incident. At the time you requested the previous opinion, you advised this office that the Victoria County Sheriff's Department and the Federal Bureau of Immigration and Customs Enforcement ("BICE") were investigating the matter and had requested that the city withhold the information because release would interfere with the ongoing investigations.

You now advise and provide documentation reflecting that the United States Attorney's Office (the "U.S. Attorney") is prosecuting the criminal cases stemming from the incident,

and that the U.S. Attorney has requested that the information continue to be withheld because its release would be detrimental to the prosecutions and on-going investigations. In regard to the information responsive to the current request that is identical to the information previously requested and ruled upon by this office, we conclude that you may continue to rely on Open Records Letter No. 2003-4156 as a previous determination and may withhold the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You state that since the city received the initial requests for information, the city's police department has obtained additional information related to the incident. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an active investigation or prosecution of criminal conduct. Open Records Decision No. 372 (1983). As noted above, the U.S. Attorney is prosecuting the criminal cases stemming from the incident, and the U.S. Attorney has requested that all information regarding the incident continue to be withheld because release of the information would be detrimental to the on-going investigations by the BICE and the prosecutions currently pending. Accordingly, we conclude that the city may withhold the submitted information from disclosure under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/krl

Ref: ID# 203693

Enc. Submitted documents

c: Mr. Ken Sullivan  
Executive Producer  
KIII-TV  
P. O. Box 6669  
Corpus Christi, Texas 78466-6669  
(w/o enclosures)